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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,281	12/12/2003	Marc Ramet	233365US26	8228
22850	7590	06/13/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/733,281

Applicant(s)

RAMET, MARC

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,10,11,14,15,21,27-29 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 3-9,12,13,16-19,22-27 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/12/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The language in claim 20 does not have antecedent basis in the specification, i.e., the specification does not disclose that the non-circular cross-section of the enclosure enables the product to be fixed.

### ***Claim Objections***

Claim 16 is objected to because of the following informalities: On line 2 of claim 16 "portion" should be --position--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 10, 11, 14, 15, 21, 29 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Shatkin. In regard to claim 1, Shatkin discloses an applicator device comprised of a support 16, a lateral enclosure 15 delimiting with the support a recess for product 17 and including an opening to provide access to the product at an

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end of the recess opposite the support wherein the enclosure is mounted on the support and capable of sliding along the axis to move the enclosure relative to the product in the direction of the support and a closure cap 21 removably mountable on the support (See Figure 3). In regard to claim 2, the opening in the recess of the enclosure has a cross-section substantially identical to a cross-section of the enclosure to allow product in stick form to pass through the end of the recess. In regard to claim 10, the support includes a "lower end" (adjacent the product 17) that projects beyond the cap when the cap is mounted in a "closed position" on the support. In regard to claim 11, the support includes "attachment means" 19 to removably fix the cap to the support. In regard to claims 14 and 15, the product is a lipstick (i.e., a cosmetic). In regard to claim 21, when the enclosure is in the first position (figure 3) a portion of the support is exposed (the bottom edge 20 is exposed before the cap is placed thereover) and the enclosure progressively covers the portion when slid along the support. In regard to claim 29, the enclosure includes a flange 15' which abuts a lip 19 in the support when the device is in the first position. In regard to claim 31, the product 17 is lipstick. In regard to claim 32, the product is fixed in the axial direction. In regard to claim 33, the connection between the product and the support will inherently act as a means for preventing rotation of the product.

Claims 21, 27-29, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Philippe. In regard to claim 21, Philippe discloses an applicator device comprised of a support 10 (see Figure 2), a lateral enclosure 3 which defines a recess for the support and having an opening 5 in the first end of the recess with the support

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closing the second end of the recess and wherein the enclosure is slidable with respect to the support as claimed and a product in the recess and exposable as claimed. In regard to claim 27, the support includes a first step 13 wherein the enclosure abuts the step when in the lowermost position (a careful measurement of the device indicates that enclosure 3 will abut step 13 as disc 18 contacts upper surface 4). In regard to claims 28 and 29, the opposite side endwalls of groove 14 defines an inwardly protruding flange on the enclosure and the support includes a lip 15 that abuts the flange. In regard to claim 32, the product is "substantially fixed" in an axial direction. In regard to claim 33, the groove 14 inherently acts as a means for preventing rotation of the product.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shatkin. Although the Shatkin reference does not disclose that the enclosure has a non-circular cross-section, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the enclosure can be designed to have any suitable cross-section, including a non-circular cross-section, without effecting the overall operation of the device.

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Claims 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philippe. In regard to claim 31, although the Philippe reference does not disclose the claimed products, the reference does disclose that the device is used to dispense cosmetics and toilet preparations (see lines 1-4). Accordingly, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the Philippe device can be used to dispense a deodorant product or a hair care product (which are considered to be "toilet preparations") or a lipstick, foundation, eye shadow or hair coloring product (i.e., a cosmetic). Although the Philippe reference does not disclose that the enclosure has a non-circular cross-section, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the enclosure can be designed to have any suitable cross-section, including a non-circular cross-section, without effecting the overall operation of the device.

### ***Allowable Subject Matter***

Claims 3-9, 12, 13, 16-19, 22-27 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***


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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Mahler et al., Volpini and Whetstone are cited for disclosing other applicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-5895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
6/4/05